

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELSMERE PARK CLUB, L.P.,
a Delaware limited partnership,

Plaintiff,

V.

TOWN OF ELSMERE, a Delaware
municipal corporation, ELLIS
BLOMQUIST, EUGENE BONEKER,
and JOHN GILES,

Defendants.

Civil Action No. 04-1321 (SLR)

JURY TRIAL DEMANDED

**DEFENDANTS TOWN OF ELSMERE, ELLIS BLOMQUIST,
EUGENE BONEKER AND JOHN GILES'S MOTION FOR SANCTIONS**

Defendants Town of Elsmere, Ellis Blomquist, Eugene Boneker and John Giles (collectively, “Defendants”) move the Court for monetary and equitable sanctions pursuant to Federal Rule of Civil Procedure Rule 37 and Rule 1.3 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware. These sanctions are proper under Federal Rule of Civil Procedure Rule 37 and Local Rule 1.3 because Plaintiff has consistently failed to meet its obligation pursuant to Fed. R. Civ. P. 26(b)(4)(a) to produce its expert witness for deposition. Plaintiff has done

so in bad faith and in an effort to frustrate the timely adjudication of this case.

Defendants rely upon an Opening Brief filed contemporaneously herewith.

MORRIS, JAMES, HITCHENS & WILLIAMS LLP



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Attorneys for Defendants Town of Elsmere,

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Dated: November 7, 2005

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ELSMERE PARK CLUB, L.P., a Delaware limited partnership,	:	
	:	
Plaintiff,	:	Civil Action No. 04-1321 (SLR)
	:	
v.	:	
	:	
TOWN OF ELSMERE, a Delaware municipal corporation, ELLIS BLOMQUIST, EUGENE BONEKER, and JOHN GILES,	:	
	:	
Defendants.	:	
	:	

ORDER

WHEREAS, Plaintiff has willfully failed to produce its damages expert, David J. Wilk for deposition despite being properly noticed on three separate occasions; and

WHEREAS, counsel for Defendants Town of Elsmere, Ellis Blomquist, Eugene Boneker and John Giles have filed a Motion for Sanctions;

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Defendants' Motion is GRANTED; and
2. Plaintiff shall be precluded from introducing the expert report or testimony of David J. Wilk ("Wilk") into evidence in the above-captioned proceeding; and
3. Plaintiff shall pay the reasonable costs and fees associated with the failure to produce Wilk for deposition, including the attorney's fees associated with the filing of

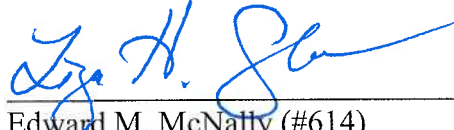
the Motion.

Honorable Sue L. Robinson
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2005, I electronically filed the foregoing Defendants Town of Elsmere, Ellis Blomquist, Eugene Boneker and John Giles' Motion for Sanctions, Opening Brief in Support of Their Motion for Sanctions, Exhibits A through G to the Brief in Support of Their Motion for Sanctions, and Certification Pursuant to Federal Rule 37(d) and Local Rule Rule 7.1.1, with the Clerk of the Court using CM/ECF, which will send notification of such filing to the following:

David S. Eagle, Esquire
Klehr, Harrison, Harvey,
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